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17 and on behalf of all others similarly situated and as a
18 representative of other current and former employees

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY OF ORANGE**

21 AMANDA PORTELA, individually and on
22 behalf of all others similarly situated,

23 Plaintiff,

24 vs.

25 O'REILLY AUTO ENTERPRISES, LLC, a
26 Delaware limited liability company and DOES
27 1 through 25,

28 Defendants.

Case No.: 30-2017-00929212-CU-0E-CXC
Judge Glenda Sanders
CX101

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Failure to Pay Wages Earned
2. Violation of Labor Code §510
(Failure to Pay Overtime)
3. Violation of Labor Code §§226.7
and 512(a) (Failure to Provide Meal
and Rest Breaks)
4. Violation of Labor Code §§201 and
202 (Failure to Pay Unpaid Wages
at Time of Discharge)
5. Violation of Labor Code §2802 and
§ 9(A) of the Wage Order (Failure
to Reimburse for Necessary
Expenditures and to Provide and
Maintain Uniforms)
6. Violation of Labor Code §221
7. Violation of Business & Professions
Code §§ 17200 *et seq.*
8. Penalties Under Labor Code
§26999 for Labor Code Violations

Jury Trial Demanded

1 Plaintiff bring this action individually and on behalf of all others similarly situated.

2 PARTIES, JURISDICTION AND VENUE

3 1. Plaintiff Amanda Portela is an individual and resident of Orange, California.
4 Plaintiff was employed by Defendants as a merchandiser, salesperson and driver at various
5 of Defendants' auto parts stores in Orange County, California from March 2014 to June
6 2016.

7 2. Defendant O'Reilly Auto Enterprises LLC is a limited liability company
8 organized under the laws of the state of Delaware and is authorized to do and doing business
9 in the State of California, and is one of the entities which owns and operates O'Reilly Auto
10 Parts stores in California and throughout the United States, and has owned and operated
11 such businesses at all times relevant hereto.

12 3. Plaintiff does not know the true names or capacities of the Defendants sued
13 herein as Does 1 through 25, inclusive, and, for that reason, said Defendants are sued under
14 such fictitious names. Plaintiff is informed and believes, and based thereon, alleges that each
15 of said fictitious Defendants are and were responsible in some manner for the injuries
16 complained of herein. Plaintiff will amend this Complaint to name such fictitiously-named
17 Defendants pursuant to Code of Civil Procedure Section 474 once their identities become
18 known.

19 4. The monetary and equitable relief sought by Plaintiff on behalf of herself and
20 the Class defined below exceeds the minimal jurisdictional limits of the Superior Court and
21 will be established according to proof at trial. The Court has personal jurisdiction over each
22 of the parties because they are either citizens of this State, doing business in this State or
23 otherwise have minimum contacts with this State.

24 5. Venue is proper in this County, as Plaintiff was employed by Defendants
25 here.

26 6. At all times relevant hereto, Defendants employed persons and conducted
27 business operations in California. Defendants are therefore subject to the provisions of the
28 California Labor Code, the applicable IWC Wage Order(s), California Business and

1 Professions Code Sections 17200 *et seq.* ("Unfair Competition Law" or "UCL") and other
2 relevant California law.

3 7. Plaintiff is informed and believes and, based thereon, alleges that the
4 Defendants were at all times relevant hereto members of, and engaged in, a joint venture,
5 partnership, association or common enterprise, and acting within the course and scope of,
6 and in pursuance of, said joint venture, partnership, association or common enterprise.
7 Furthermore, Plaintiff is informed and believes and, based thereon, alleges that at all times
8 relevant hereto Defendants conspired together in, aided and abetted, contributed to, and/or
9 acted as agents or employees of each other with respect to, the commission of the acts
10 complained of herein. Defendants are therefore jointly and severally liable for the injuries
11 complained of herein.

12 CLASS ALLEGATIONS

13 8. Plaintiff brings this action pursuant to California Code of Civil Procedure
14 Section 382 on behalf of herself and the Class described below. The Class is comprised of
15 and defined as:

16 All non-exempt employees of Defendants in California from four
17 years prior to the initiation of this action until the date that the class is
18 certified (hereinafter "the Class period").

19 9. There exists a well-defined community of interest among the Class, and the
20 Class is readily ascertainable for the following reasons:

21 a. The members of the Class are so numerous that joinder of all
22 members in a single action would not be feasible or practical, and the amount of individual
23 damages is not large enough to make individual lawsuits by each class member practical or
24 feasible. Plaintiff is informed and believes and based upon such information and belief
25 alleges that there are in excess of 50 members of the Class.

26 b. Plaintiff's claims are typical of the claims of the rest of the Class, and
27 Plaintiff will fairly and adequately represent the interests of the Class.

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1 c. Common issues of fact and/or law predominate in this action over any
2 allegedly individual issues. Specifically, the following common questions of fact or law
3 predominate and make this action superior to individual actions:

4 (i) whether Plaintiff and the rest of the Class are entitled to
5 recover damages, penalties, injunctive relief or other equitable relief on the grounds that
6 Defendants have used uniform policies and procedures that have, from time to time, violated
7 California labor laws and regulations and caused Plaintiff and the rest of the Class to suffer
8 the same or similar injuries;

9 (ii) whether Defendants failed to pay Plaintiff and the rest of the
10 Class for all hours worked, in violation of California law, including Labor Code Section 204
11 and the applicable IWC wage order;

12 (iii) whether Defendants failed to compensate Plaintiff and the rest
13 of the Class for overtime worked, in violation of Labor Code Section 510;

14 (iv) whether Defendants failed to provide Plaintiff and the rest of
15 the Class with the legally required meal and rest breaks, in violation of Labor Code Sections
16 226.7 and 512(a) and the applicable wage order;

17 (v) whether Defendants failed to pay Plaintiff and the Class meal
18 period premium wages, as required by Labor Code section 226.7(c);

19 (vi) whether Defendants' incentive compensation plan violates
20 Labor Code section 221 and other California law;

21 (vii) whether Defendants failed to compensate Plaintiff and the rest
22 of the Class for all amounts due at the time of discharge, in violation of Labor Code Sections
23 201 and 202;

24 (viii) whether Defendants failed to indemnify the Class for all of the
25 necessary expenditures or losses incurred in direct consequence of the discharge of their
26 duties, or of their obedience to the directions of their employer, as a result of which the
27 Class was required to use their own automobiles and personal phones in the performance of
28 their duties for Defendants, in violation of Labor Code Section 2802;

1 (ix) whether Defendants required Plaintiff and the rest of the Class
2 to provide and maintain uniforms that they were required to wear; and

3 (x) whether Defendants' practices constitute unfair, fraudulent, or
4 illegal business practices under Business and Professions Code Sections 17200 *et seq.*

5 10. California labor laws under which Plaintiff asserts the following causes of
6 action on behalf of herself and the rest of the Class are broadly remedial in nature. These
7 labor laws serve an important public interest in establishing minimum working conditions
8 and standards in California. They furthermore protect employees from exploitation by
9 employers who may seek to take advantage of their superior economic and bargaining power
10 in setting onerous terms and conditions of employment. The class action mechanism is a
11 particularly efficient and appropriate procedure to redress the injuries alleged herein. If each
12 employee in the Class was required to file an individual action, Defendants would be able to
13 use their superior financial and legal resources to gain an unfair advantage over each
14 individual class member. Moreover, requiring each class member to pursue an individual
15 action would also discourage the assertion of meritorious causes of action by employees
16 who would likely be disinclined to file such individual actions due to a justifiable fear of
17 retaliation and damage to their careers at subsequent employment.

18 11. In addition, even if feasible, individual actions by each Class member would
19 create a substantial risk (i) of inconsistent or varying adjudications with respect to the claims
20 of each Class member against Defendants, that in turn could establish potentially
21 incompatible standards of conduct for Defendants, and/or (ii) of adjudications with respect
22 to individual Class members that would, as a practical matter, be dispositive of the interests
23 of the other Class members. Furthermore, the claims of each individual Class member are
24 not sufficiently large enough to make it economically feasible to bring each Class member's
25 claims on an individual basis.

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FIRST CAUSE OF ACTION

FAILURE TO PAY WAGES OWED

(Against all Defendants)

12. Plaintiff re-alleges and incorporates herein by this reference each of the allegations set forth in Paragraphs 1- 11, inclusive.

13. During the Class period, Labor Code Section 204 and the applicable IWC Wage Order applied to Defendants' employment of Plaintiff and the rest of the Class. At all times relevant hereto, Labor Code Section 204, the applicable IWC Wage Order, and other provisions of California law required Defendants to compensate Plaintiff and the Class for all hour worked, which included and includes the time Plaintiff and the Class were and are performing work for the benefit of Defendants.

14. During the Class Period, from time to time, Plaintiff and the Class were required to work off the clock. Sometimes, Plaintiff and the Class would arrive at work and because the store was busy, were ordered by their supervisors to assist customers before clocking in. When closing, Plaintiff and the Class were required to clock out by a specific time. Sometimes, they had not yet completed their work for the day and therefore were required to complete their work after clocking out. Plaintiff and the Class were never paid for these times and others, when they worked off the clock. Accordingly, Plaintiff and the rest of the Class are entitled to recover from Defendants unpaid wages under California law, including Labor Code Section 204, for any time they worked off the clock and did not earn agreed upon wages at any time within the four years prior to the initiation of this action until the date that the Class is certified, plus liquidated damages under Labor Code Section 1194.2, interest thereon, together with their reasonable attorneys' fees and costs.

SECOND CAUSE OF ACTION

FOR VIOLATION OF LABOR CODE SECTION 510

(Against all Defendants)

15. Plaintiff re-alleges and incorporates herein by this reference each of the allegations set forth in Paragraph 1- 14, inclusive.

1 16. During the Class period, Labor Code Section 510 applied to Defendants'
2 employment of Plaintiff and the rest of the Class. At all times relevant hereto, Labor Code
3 Section 510 required Defendants to compensate Plaintiff and the Class at no less than one
4 and one-half times their regular rate of pay for any hours worked in excess of eight (8) hours
5 in any day and forty (40) hours in any one workweek.

6 17. At times during the Class Period, Plaintiff and the Class were required to
7 work in excess of eight (8) hours in any day and/or more than forty (40) hours during the
8 workweek. Because, as alleged above, some of these overtime hours were worked off the
9 clock, Plaintiff and the Class were not compensated for this time at the rates required by
10 Labor Code Section 510. Accordingly, Plaintiff and the rest of the Class are entitled to
11 recover from Defendants unpaid overtime that they incurred within the applicable
12 limitations period until the date that the Class is certified, interest thereon, together with
13 their reasonable attorneys' fees and costs.

14 **THIRD CAUSE OF ACTION**

15 **FOR VIOLATION OF LABOR CODE SECTIONS 226.7(b) AND 512(a)**

16 **AND THE APPLICABLE IWC WAGE ORDER**

17 **(Against all Defendants)**

18 18. Plaintiff re-alleges and incorporates herein by this reference each of the
19 allegations set forth in Paragraphs 1-17, inclusive.

20 19. During the Class period, Labor Code Sections 226.7(b) and 512(a) and the
21 applicable IWC Wage Order applied to Defendants' employment of Plaintiff and the rest of
22 the Class. At all times relevant hereto, Labor Code Section 226.7(b) provided that
23 employers such as Defendants could not require employees such as the Class members to
24 work during any meal or rest period mandated by an applicable order of the IWC.

25 20. At all times relevant hereto, Labor Code Section 512(a) and the applicable
26 IWC Order also required Defendants, every time Plaintiff and the Class worked a period of
27 five (5) or more hours per day, to permit Plaintiff and the Class the opportunity to take a
28 thirty (30) minute uninterrupted meal break during which Plaintiff and the Class were and

1 are free to leave the premises and were and are relieved of all duty. Furthermore, at all
2 times relevant hereto, Labor Code Section 512(a) and the applicable IWC Wage Order
3 provided that employers such as Defendants could not require or permit an employee such
4 as Plaintiff or a member of the Class to work a period of more than ten (10) hours per day
5 without providing the employee with a second uninterrupted meal period of not less than
6 thirty (30) minutes, except that if the total hours worked is or was no more than twelve (12)
7 hours, the second meal period could and may be waived by mutual consent of the employer
8 and the employee only if the first meal period is not waived.

9 21. At all relevant times, the applicable IWC Wage Order provides that “[e]very
10 employer shall authorize and permit all employees to take rest periods, which insofar as
11 practicable shall be in the middle of each work period” and that the “rest period time shall be
12 based on the total hours worked daily at the rate of ten (10) minutes net rest per four (4)
13 hours or major fraction thereof” unless the total daily work time is less than three and one-
14 half (3 ½) hours.

15 22. At times during the Class period, Plaintiff and the rest of the Class were
16 required by Defendants to work more than five (5) hours per day before they were given the
17 opportunity to take a thirty (30) minute uninterrupted meal break during which Plaintiff and
18 the Class were and are free to leave the premises and were and are relieved of all duty, with
19 the exception of those employees who worked six (6) hours or less per day and legally
20 waived their meal periods by mutual consent. Furthermore, at times during the Class period,
21 Plaintiff and the Class were required by Defendants to work more than ten (10) hours per
22 day without receiving a second meal period of not less than thirty (30) minutes, with the
23 exception of those employees who worked twelve (12) hours or less per day and legally
24 waived their second meal periods by mutual written consent.

25 23. At times during the Class Period, Defendants failed to provide Plaintiff and
26 the rest of the Class with required rest periods in violation of Labor Code Section 226.7(b)
27 and the applicable IWC Wage Order.

1 24. Labor Code section 226.7(c) provides that if an employer like Defendants
2 fails to provide employees like Plaintiff and the Class with compliant meal and rest periods,
3 "the employer shall pay the employee one additional hour of pay at the employee's regular
4 rate of compensation for each workday that the meal or rest [] period is not provided."

5 25. On those occasions that Plaintiff and the Class were not provided with
6 compliant meal and rest breaks, Defendants did not compensate Plaintiff and the Class with
7 one hour of pay at their regular rate of pay, as required by Labor Code section 226.7(c).

8 26. Accordingly, pursuant to Labor Code Section 226.7(c), Plaintiff and the rest
9 of the Class are entitled to recover from Defendants one additional hour of pay at the Class
10 members' regular rate of compensation for each work day that a meal or rest period was not
11 provided, plus their reasonable attorneys' fees and costs.

12 **FOURTH CAUSE OF ACTION**

13 **FOR VIOLATION OF LABOR CODE SECTIONS 201 and 202**

14 (Against all Defendants)

15 27. Plaintiff re-alleges and incorporates herein by this reference each of the
16 allegations set forth in Paragraphs 1-26, inclusive.

17 28. During the Class period, Labor Code Sections 201 and 202 applied to
18 Defendants' employment of Plaintiff and the rest of the Class. At all times relevant hereto,
19 Labor Code Section 201 provided that, if an employer such as Defendants discharged an
20 employee such as a member of the Class, the wages earned and unpaid at the time of
21 discharge were due and payable immediately. Furthermore, at all relevant times Labor Code
22 Section 202 provided and provides that, if an employee such as a member of the Class
23 voluntarily leaves his or her employment, the wages earned and unpaid must be paid by the
24 employer within seventy-two (72) hours thereafter, unless the employee has given seventy-
25 two (72) hours previous notice of his or her intention to leave, in which case the employee is
26 entitled to receive his or her wages immediately at the time of quitting.

27 29. Plaintiff and other members of the Class left their positions of employment at
28 Defendants' business during the Class period. However, Defendants did not pay Plaintiff

1 and the Class all of the wages that were due to them within the time required by sections 201
2 and 202, including incentives that had been earned and become calculable prior to
3 termination. Plaintiff is informed and believes and, based thereon, alleges that, during the
4 Class period, Defendants willfully failed to pay Plaintiff and the members of the Class who
5 are former employees their earned and unpaid wages, either at the time of their discharge or
6 within seventy-two (72) hours of their quitting. Defendants therefore violated Labor Code
7 Section 201 and 202.

8 30. During the Class period, Labor Code Section 203 provided that if an
9 employer such as Defendants fails to pay any wages of an employee who is discharged or
10 who quits, the wages of the employee shall continue as a penalty from the due date thereof
11 at the same rate until paid or until an action therefore is commenced, but the wages shall not
12 continue for more than thirty (30) days. Accordingly, Plaintiff and the members of the Class
13 who were discharged or who quit during the Class period are entitled to receive their wages
14 for each day they were not paid, at their regular rate of pay, up to a maximum of thirty (30)
15 days, plus interest, costs and reasonable attorneys' fees.

16 **FIFTH CAUSE OF ACTION**

17 **FOR VIOLATION OF LABOR CODE SECTIONS 2802 AND**
18 **SECTION 9 OF THE WAGE ORDER**

19 (Against all Defendants)

20 31. Plaintiff re-alleges and incorporates herein by this reference each of the
21 allegations set forth in Paragraphs 1-30, inclusive.

22 32. During the Class period, Labor Code Section 2802 applied to Defendants'
23 employment of Plaintiff and the rest of the Class, and required employers such as
24 Defendants to reimburse their employees for all necessary expenditures or losses incurred by
25 employees in direct consequence of the discharge of their duties, which includes the
26 obligation to reimburse employees for the use of their own vehicles when they were required
27 to travel in the course and scope of their employment. Further, Section 9(A) of Wage Order
28 4 requires employers to provide and maintain uniforms that employees are required to wear.

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SEVENTH CAUSE OF ACTION

FOR VIOLATION OF BUSINESS AND PROFESSIONS CODE

SECTIONS 17200 *ET SEQ.*

(Against all Defendants)

39. Plaintiff re-alleges and incorporates herein by this reference each of the allegations in Paragraphs 1-38, inclusive.

40. During the Class period, Defendants' practices, as alleged above, have been and continue to be unfair, fraudulent and illegal, and harmful to Plaintiff, the rest of the Class and the general public. Defendants' above-alleged practices constitute violations of Business and Professions Code Sections 17200 *et seq.* Specifically, a practice that violates any state law or regulation may constitute the basis of an unlawful business practice prohibited by Business and Professions Code Sections 17200 *et seq.*

41. Among other things, the following practices of Defendants, as alleged above, constitute unfair business practices:

a. Defendants' failure to compensate Plaintiff and the Class for all time under Defendants' control;

b. Defendants' failure to compensate Plaintiff and the Class for their overtime work at the rates required by Labor Code Section 510;

c. Defendants' failure to provide legally-required meal and rest breaks, as required by Labor Code sections 226.7(b) and 512(a) and the applicable IWC order and failure to pay the premium wages required by section 226.7(c);

d. Defendants' unlawful method of calculating commissions;

e. Defendants' failure to all pay wages within the period required by Labor Code sections 201 and 202; and

f. Defendants' failure to reimburse Plaintiff and the Class for their reimbursable expenses as required by Labor Code Section 2802.

1 42. Accordingly, pursuant to Business and Professions Code Section 17200
2 *et seq.*, Plaintiff and the rest of the Class are entitled to restitution of wages and other
3 property held by Defendants.

4 43. Plaintiff meets the standing requirements for seeking relief pursuant to
5 Business and Professions Code Section 17203, in that she has suffered an injury in fact and
6 have lost money as a result of Defendants' policies, practices and procedures, as more fully
7 set forth elsewhere in this pleading.

8 **EIGHTH CAUSE OF ACTION**
9 **FOR VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT OF 2004**

10 (Against all Defendants)

11 44. Plaintiff re-alleges and incorporates herein by this reference each of the
12 allegations in Paragraphs 1-7 and 12-38, inclusive.

13 45. Plaintiff brings this cause of action as a representative action on behalf of the
14 LWDA under the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code
15 §§ 2698-2699.5. In pursuing her PAGA claim, Plaintiff represents the same legal right and
16 interest as state labor law enforcement agencies. PAGA permits her to recover civil penalties
17 that otherwise would have been assessed and collected by the LWDA. Plaintiff does not bring
18 her PAGA claim as an individual but as an agent of the LWDA, and as such brings this
19 representative action on behalf of all other current and former employees who were aggrieved
20 within the statutory time periods for the specific violations of the California Labor Code
21 alleged herein.

22 46. Plaintiff has complied with notice requirements of Labor Code section 2699.3.
23 On March 9, 2017, Plaintiff's representative notified the LWDA and Defendants in writing of
24 the Labor Code violations set forth herein. Sixty-five days later, the LWDA had not responded
25 to Plaintiff's notice. Pursuant to section 2699.3(a)(2)(A), Plaintiff was entitled to commence
26 this action.

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1 Failure to Pay Wages Owed

2 47. Labor Code Section 204 and the applicable IWC Wage Order applied to
3 Defendants' employment of Plaintiff and the rest of the aggrieved employees. At all times
4 relevant hereto, Labor Code section 204, the applicable IWC Wage Order, and other
5 provisions of California law required Defendants to compensate Plaintiff and the aggrieved
6 employees for all hour worked, which included and includes the time Plaintiff and the
7 aggrieved employees were and are performing work for the benefit of Defendants.

8 48. Labor Code Section 510 applied to Defendants' employment of Plaintiff and
9 the rest of the aggrieved employees. At all times relevant hereto, Labor Code Section 510
10 required Defendants to compensate Plaintiff and the aggrieved employees no less than one
11 and one-half times their regular rate of pay for any hours worked in excess of eight (8) hours
12 in any day and forty (40) hours in any one workweek.

13 49. Pursuant to Labor Code section 204 and applicable California law, all wages
14 are payable semi-monthly, except that commissions may be paid on the pay date following
15 the date upon which the commission becomes calculable.

16 50. From time to time, Plaintiff and the aggrieved employees were required to
17 work before they could clock in for their shifts and were required to work after they had
18 clocked out. As a result, Plaintiff and the aggrieved employees were not paid for all of the
19 time they were under their employer's control. At times, such wages should have been paid at
20 overtime rates, as provided by Labor Code section 510. Accordingly, Plaintiff and the rest of
21 the aggrieved employees are entitled to recover from Defendants unpaid wages, including
22 overtime wages, and penalties under Labor Code section 558.

23 51. Defendants further violated section 204 by delaying the payment of incentives
24 owed to aggrieved employees. Such incentives became immediately calculable as of the end
25 of each month. However, Defendants delayed paying incentive wages until the second pay
26 day of the following month. Due to the forgoing violations, Plaintiff is entitled to recover
27 penalties equal to \$100 per employee for the first violation and \$200 per employee for all
28 subsequent violations.

1 **Violations of Labor Code section 226**

2 52. At all times relevant hereto, Labor Code Section 226(a) applied to Defendants'
3 employment of Plaintiff and the rest of the aggrieved employees and required that employers
4 such as Defendants furnish to their employees, semi-monthly or at the time of each payment
5 of wages, an accurate itemized statement in writing showing such matters as the employer's
6 legal name and address, the gross wages earned, the total hours worked, the net wages earned
7 and all applicable hourly rates, during the pay period.

8 53. Plaintiff is informed and believe and, based thereon, alleges that at various
9 times, Defendants knowingly and intentionally failed to provide such accurate itemized wage
10 statements to Plaintiff and the other aggrieved employees, in that, among other things, such
11 statements from time to time failed to include all wages earned and the employer's legal name
12 and address.

13 54. Pursuant to Labor Code section 226(c), Plaintiff is entitled to recover penalties
14 equal to \$50 for the first violation per employee and \$100 for each subsequent violation.

15 **Violations of Labor Code sections 226.7(b) and 512(a)**

16 55. Labor Code Sections 226.7(b) and 512(a) and the applicable IWC Wage Order
17 applied to Defendants' employment of Plaintiff and the rest of the aggrieved employees. At
18 all times relevant hereto, Labor Code Section 226.7(b) provided that employers such as
19 Defendants could not require employees such as the aggrieved employees to work during any
20 meal or rest period mandated by an applicable order of the IWC.

21 56. At all times relevant hereto, Labor Code Section 512(a) and the applicable
22 IWC Order also required Defendants, every time Plaintiff and the aggrieved employees
23 worked a period of five (5) or more hours per day, to permit Plaintiff and the aggrieved
24 employees the opportunity to take a thirty (30) minute uninterrupted meal break during which
25 Plaintiff and the aggrieved employees were and are free to leave the premises and were and
26 are relieved of all duty. Furthermore, at all times relevant hereto, Labor Code Section 512(a)
27 and the applicable IWC Wage Order provided that employers such as Defendants could not
28 require or permit an employee such as Plaintiff or aggrieved employees to work a period of

1 more than ten (10) hours per day without providing the employee with a second uninterrupted
2 meal period of not less than thirty (30) minutes, except that if the total hours worked is or was
3 no more than twelve (12) hours, the second meal period could and may be waived by mutual
4 consent of the employer and the employee only if the first meal period is not waived.

5 57. At all relevant times, the applicable IWC Wage Order provides that “[e]very
6 employer shall authorize and permit all employees to take rest periods, which insofar as
7 practicable shall be in the middle of each work period” and that the “rest period time shall be
8 based on the total hours worked daily at the rate of ten (10) minutes net rest per four (4) hours
9 or major fraction thereof” unless the total daily work time is less than three and one-half (3
10 ½) hours.

11 58. Plaintiff and the rest of the aggrieved employees were required by Defendants
12 to work more than five (5) hours per day before they were given the opportunity to take a
13 thirty (30) minute uninterrupted meal break during which Plaintiff and the aggrieved
14 employees were and are free to leave the premises and were and are relieved of all duty.
15 Furthermore, at times Plaintiff and the aggrieved employees were required by Defendants to
16 work more than ten (10) hours per day without receiving a second meal period of not less than
17 thirty (30) minutes, with the exception of those employees who worked twelve (12) hours or
18 less per day and legally waived their second meal periods by mutual written consent. In
19 addition, Defendants failed to provide Plaintiff and the rest of the aggrieved employees with
20 required rest periods in violation of Labor Code Section 226.7(b) and the applicable IWC
21 Wage Order.

22 59. At all relevant times, Labor Code section 226.7 provided that when a compliant
23 meal or rest break is not provided, “the employer shall pay the employee one additional hour
24 of pay at the employee’s regular rate of compensation for each workday that the meal or rest
25 or recover period is not provided.”

26 60. Accordingly, pursuant to Labor Code Sections 558 and 2699, Plaintiff and the
27 rest of the aggrieved employees are entitled to recover penalties of \$50 per aggrieved
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1 employee for each initial violation and \$100 per aggrieved employee for each subsequent
2 violation and all unpaid and underpaid wages, as provided for under section 226.7.

3 **Violations of Labor Code section 2802.**

4 61. At all times relevant hereto, Labor Code Section 2802 applied to Defendants'
5 employment of Plaintiff and other aggrieved employees. At all times relevant hereto, Labor
6 Code Section 2802 required Defendants to reimburse Plaintiff and other aggrieved employees
7 for expenditures they were required to make as a condition of their employment. In addition,
8 as confirmed in section 9(A) of the Wage Order, Defendants were required to provide and
9 maintain uniforms that aggrieved employees were required to wear.

10 62. At times, Plaintiff and other aggrieved employees were required to drive their
11 own vehicles and use their own GPS devices to fulfill their duties as employees.

12 63. Defendants did not reimburse Plaintiff and the other aggrieved employees for
13 automobile, GPS or uniform-related expenses. Accordingly, Plaintiff and the other aggrieved
14 employees are entitled to recover penalties as provided for in Labor Code section 2699 of
15 \$100 per employee for the first violation and \$200 per employee for each subsequent violation.

16 **Violations of Labor Code Section 2751**

17 64. Labor Code section 2751 requires that commission compensation
18 arrangements of the type that Defendants had with aggrieved employees must be "in writing
19 and shall set forth the method by which the commissions shall be computed and paid."
20 Moreover, "[t]he employer shall give a signed copy of the contract to every employee who is
21 a party thereto and shall obtain a signed receipt for the contract from each employee."

22 65. On information and belief, aggrieved employees did not have signed
23 commission agreements with Defendants, Defendants not provide aggrieved employees with
24 signed copies of any commission contracts, and Defendants did not obtain a signed receipt for
25 the commission contract from each aggrieved employee. As a result of these violations
26 O'Reilly is liable for civil penalties pursuant to California Labor Code section 2699(f).

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1 Violations of Labor Code sections 201 and 202.

2 66. At all times relevant hereto, Labor Code Sections 201 and 202 applied to
3 Defendants' employment of Plaintiff and the other aggrieved employees. At all times relevant
4 hereto, Labor Code Section 201 provided that, if an employer such as Defendants discharged
5 an employee such as Plaintiff or the other aggrieved employees, the wages earned and unpaid
6 at the time of discharge were due and payable immediately. Furthermore, at all relevant times
7 Labor Code Sections 202 provided and provides that, if an employee such as Plaintiff or one
8 of the other aggrieved employees voluntarily leaves his or her employment, the wages earned
9 and unpaid must be paid by the employer within seventy-two (72) hours thereafter, unless the
10 employee has given seventy-two (72) hours previous notice of his or her intention to leave, in
11 which case the employee is entitled to receive his or her wages immediately at the time of
12 quitting.

13 67. Plaintiff and other aggrieved employees left their positions of employment at
14 Defendants' business. However, Defendants did not pay Plaintiff and the other aggrieved
15 employees all of the wages that were due to them within the time required by sections 201
16 and 202, including incentive payments that had become calculable as of the date of any such
17 termination. Plaintiff and the other aggrieved employees are informed and believe and, based
18 thereon, allege that at all times relevant hereto, Defendants willfully failed to pay Plaintiff and
19 the other aggrieved employees their earned and unpaid wages, either at the time of their
20 discharge or within seventy-two (72) hours of their quitting. Defendants therefore violated
21 Labor Code Section 201 and 202.

22 68. As a result of the acts alleged above and the allegations incorporated herein,
23 Plaintiff seeks penalties for themselves and the LWDA on behalf of the other aggrieved
24 employees under the California Labor Code, including the penalties available under sections
25 558, 2699, 1197.1, 226.7, 226(e), and 203.

26 69. Pursuant to California Labor Code § 2699, Plaintiff should be awarded twenty-
27 five percent (25%) of all penalties due under California law, plus attorneys' fees and costs.

28 //

PRAYER

WHEREFORE, Plaintiff prays for judgment on behalf of herself and the rest of the Class against all Defendants, as follows:

ON THE FIRST CAUSE OF ACTION

1. For damages for unpaid wages for Defendants' failure to pay Plaintiff and the Class for all hours worked, including the time members of the Class worked off of the clock and were not paid;

2. For liquidated damages pursuant to Labor Code Section 1194.2;

3. For prejudgment interest; and

4. For reasonable attorneys' fees and costs under Labor Code Section 218.5.

ON THE SECOND CAUSE OF ACTION

1. For damages for unpaid overtime, as required by law;

2. For liquidated damages pursuant to Labor Code Section 1194.2;

3. For prejudgment interest; and

4. For reasonable attorneys' fees and costs under Labor Code Section 218.5.

ON THE THIRD CAUSE OF ACTION

1. For damages for unpaid compensation as mandated by Labor Code section 226.7(c) for failing to provide timely and uninterrupted meal periods and/or rest periods;

2. For prejudgment interest; and

3. For reasonable attorneys' fees and costs under Labor Code Section 218.5.

ON THE FIFTH CAUSE OF ACTION

1. For the wages of each Class member who is no longer employed by Defendant at their regular daily rate up to a maximum of thirty (30) days;

2. For prejudgment interest; and

3. For reasonable attorneys' fees.

ON THE SIXTH CAUSE OF ACTION

1. For damages for the cost of the reimbursable expenses and the costs of providing and maintaining uniforms incurred by Plaintiff;

1 2. For prejudgment interest;

2 3. For reasonable attorneys' fees and costs under Labor Code Section 2802.

3 **ON THE SEVENTH CAUSE OF ACTION**

4 1. For restitution of all unpaid wages, overtime and other monies withheld from
5 Plaintiff and the rest of the Class as a result of Defendants' unfair, unlawful or fraudulent
6 business practices; and

7 2. For reasonable attorneys' fees and costs under Code of Civil Procedure
8 Section 1021.5.

9 **ON THE EIGHTH CAUSE OF ACTION**

10 1. For compensatory damages;

11 2. For penalties;

12 3. For prejudgment interest; and

13 4. For reasonable attorneys' fees and costs under Code of Civil Procedure
14 section 2699(g)(1).

15 **ON ALL CAUSES OF ACTION**

16 1. For certification of the First through Seventh Causes of Action as a class
17 action;

18 2. For attorneys' fees and costs pursuant to Civil Procedure Section 1021.5, the
19 "common fund" theory, the "substantial benefit" theory and/or any other applicable theory
20 or doctrine; and,

21 3. For such further relief as the Court may deem appropriate.

22 DATED: June 28, 2017

GARTENBERG GELFAND HAYTON LLP

23 By: 

24 Aaron C. Gundzik

25 Attorneys for Plaintiff Amanda Portela,
26 individually and on behalf of all others
27 similarly situated and as a representative of
28 other current and former employees

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for herself and the rest of the Class on all claims so triable.

DATED: June 28, 2017

GARTENBERG GELFAND HAYTON LLP

By: 

Aaron C. Gundzik

Attorneys for Plaintiff Amanda Portela,
individually and on behalf of all others
similarly situated and as a representative of
other current and former employees

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Aaron C. Gundzik (SBN 132137) Rebecca G. Gundzik (SBN 138446) Gartenberg Gelfand Hayton LLP 15260 Ventura Blvd., Suite 1920 Sherman Oaks, California 91403 TELEPHONE NO.: (213) 542-2100 FAX NO.: (213) 542-2101 ATTORNEY FOR (Name): Plaintiff Amanda Portela		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of Orange 06/29/2017 at 11:22:59 AM Clerk of the Superior Court By Sarah Loose, Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 751 West Santa Ana Blvd MAILING ADDRESS: Santa Ana, Ca 92701 CITY AND ZIP CODE: Civil Complex Center BRANCH NAME:		CASE NUMBER: 30-2017-00929212-CU-DE-CXC JUDGE: Judge Glenda Sanders DEPT: CX101	
CASE NAME: Amanda Portela v. O'Reilly Auto Enterprises, LLC			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/DP/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/DP/WD (23) Non-PI/DP/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/DP/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 8

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 28, 2017

(TYPE OR PRINT NAME)	(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)
NOTICE • Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions. • File this cover sheet in addition to any cover sheet required by local court rule. • If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding. • Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.	